2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 22A

Title 99 (Chapter 20 to end)

(As Revised 2020)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

SCHEDULE OF NEW SECTIONS

There are no new sections added in this supplement.

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September 2021

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY-TWO A

TITLE 99.

CRIMINAL PROCEDURE

CHAPTER 37.

RESTITUTION TO VICTIMS OF CRIMES

§ 99-37-3. Imposition and amount of restitution.

JUDICIAL DECISIONS

2. Illustrative cases.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

Restitution order was improper because the record was silent as to how the trial court arrived at $6,500 for the restitution amount and there was nothing in the record indicated that defendant was provided an opportunity to review and/or object to the restitution required. Turner v. State, 291 So. 3d 376, 2020 Miss. App. LEXIS 21 (Miss. Ct. App. 2020).

Circuit court did not err by ordering defendant to pay restitution because it heard evidence of the stolen items total approximate value, it heard testimony breaking down portion amounts of those items, and at sentencing, the circuit court ordered defendant to pay $5,000, to which she did not object. Burford v. State, — So. 3d —, 2020 Miss. App. LEXIS 484 (Miss. Ct. App. Aug. 25, 2020).

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Ineffective assistance of counsel.
6. —Conflict of interest.
7. Newly discovered evidence.
11. Timeliness.
12. Successive writs.

1. In general.

There was no Brady violation because petitioner did not make a showing that the evidence in an inmate's file was favorable to the defense or that it would have led to a different outcome; court orders would have been public records available to the defense before trial, and some of the information in documents could have been harmful to the defense. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Any prosecutorial misconduct claims could have been raised at trial, in the direct appeal, or in the initial post-conviction filings, and petitioner made no argument that those claims wee excepted from the procedural bars; therefore, those claims had been waived. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner failed to show the prosecutor's statements were so inflammatory as to require relief because no objects were posed by defense counsel. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Trial court did not err by allowing a note from a witness to petitioner while both were detained in the county jail because as to authentication, the State offered evidence that witness gave the letter to a jail trusty who submitted it to the jailer who transferred it to the investigator; there was nothing in the particular letter more incriminating than petitioner's own letters that he wrote to the witness, which were admitted into evidence. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's had been waived under the Box guidelines even if the expert's conclusions as to the position of the body should have been disclosed because petitioner never made any objection on the basis of the State's failure to disclose the expert's opinion or unfair surprise, and the defense never requested a continuance; the opinion likely would have been admissible anyway. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Time for raising a Batson issue had long since passed, and the claim could and should have been raised in prior proceedings, and thus, the issue was barred; further, petitioner's Batson claims were previously discussed extensively, and res judicata applied. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

There was no Batson violation because the side-by-side comparison between jurors showed that their situations were not identical; nothing in the record indicated that the State knew that a white member of the jury had DUIs yet accepted him anyway. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner did not show that the jury relied on any extraneous or outside-the-

courtroom information because he submitted no proof of any improper external influence upon the jury, and it was more likely that the errors were attributable to faulty memories a quarter century after the trial; the jury was repeatedly instructed that the sentencing verdict did not have to be unanimous. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Court of appeals addressed the merits of appellant's claim even though his post-conviction relief motion was not filed within the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act because appellant contended that the State's failure to prove beyond a reasonable doubt that his prior convictions arose from separate incidents at different times subjected him to an illegal sentence as a habitual offender. Jones v. State, 304 So. 3d 702, 2020 Miss. App. LEXIS 569 (Miss. Ct. App. 2020).

5. Ineffective assistance of counsel.

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his Appellant's ineffective assistance of counsel claim on the ground that counsel failed to object to his sentence was without merit; appellant was not prejudiced by the circuit court's imposing a more lenient sentence for his conviction for possession of a controlled substance while incarcerated, and appellant's ineffective assistance of counsel allegations were supported only by his own affidavit. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Petitioner's claims of ineffective assistance of trial counsel were raised and rejected in the initial post-conviction relief proceedings, and thus, the claims in his second petition were untimely and successive and barred by res judicata. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's claim that trial counsel were ineffective for failing to prepare an inmate's testimony failed on the merits because the decision not to cross-examine the inmate was defensible trial strategy, especially when the marginal benefit of any questioning about the jailhouse record was considered; petitioner did not show that the trial attorneys' performance was deficient, and he did not show prejudice. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner failed to show that counsel's performance was deficient for not interviewing witnesses because the affidavits were largely hearsay; counsel was not ineffective for failing to investigate a witness's reputation because trial counsel sufficiently showed that the witness was not reputable, and calling additional witnesses to attack his reputation would have been unnecessarily repetitive. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Counsel's performance was not deficient for failure to object to notes purportedly written by a witness to petition while they were in jail because other letters between petitioner and the witness had already been admitted; defense counsel did in fact object to the introduction of the first note, but it was admitted over the objection. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Trial counsel was not ineffective for failing to object to certain parts of the prosecutor's closing argument because there was no error in the argument; the prosecutor did not improperly comment on the victim or the victim's family, and thus, any objection would have been fruitless. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner did not show that his trial attorneys were ineffective in their presentation of mitigation evidence at the sentencing phase because much of the information submitted by affidavit was in fact discussed at the hearing; some of the allegations were contradicted by other testimony. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's ineffective-assistance-of-post-conviction-counsel claim therefore failed to meet the second Strickland prong

because a thorough review of all of the claims raised in the successive petition revealed none that had merit; thus, even if post-conviction counsel had raised any or all of the claims, the result would have been the same. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

6. —Conflict of interest.

Any claim as to an attorney's conflict of interest could have been raised before the trial judge, in the direct appeal, or in the first post-conviction petition, and thus, the issue was waived; petitioner pointed to nothing in the record that an attorney who had been appointed to represent an inmate filed any pleading or attended any court proceeding on his behalf, and he was also represented by an unconflicted attorney during the brief period of that attorney's appointment. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

7. Newly discovered evidence.

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because his due process rights were not violated by not being able to confront a witness based on "new evidence" in an unsworn affidavit from a minor child; the information contained in the affidavit was speculative at best, the statements were not sworn to, and appellant had called several witnesses but failed to call the child when he had an opportunity to do so. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Regardless of whether some or all of appellant's evidence was "new," the trial court considered all of the evidence, and its finding that it would not probably produce a different result in a new trial was not clearly erroneous, and it properly denied appellant's post-conviction relief (PRC) motion; with respect to whether short falls could cause fatal injuries, the testimony at the PCR hearing was not materially different from the trial testimony. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

Trial court did not clearly err by finding that the testimony of appellant's experts would not probably produce a different result because the evidence at the post-conviction relief hearing indicated that a majority of practicing physicians continue to accept "shaken baby syndrome" (SBS) or abusive head trauma (AHT) as valid diagnoses; the "debate" and "difference of opinion" regarding SBS and AHT existed at the time of Shelby's trial. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

11. Timeliness.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

Because the mandate in petitioner's direct appeal issued in 1999, unless Unless excepted, his petition was barred as untimely; because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).

Appellant's post-conviction relief (PCR) motion was time-barred because the circuit court sentenced him on July 2, 2012, and the circuit court's sentencing order was entered on that same day, but appellant filed his PCR motion on July 26, 2019, over four years too late. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because even if his sentence for possession of a controlled substance in a correctional facility was "illegal" in any way, he failed to demonstrate that his fundamental rights were violated by the circuit court's imposition of that sentence; given the sentence's more lenient terms, appellant did not suffer any fundamental unfairness from the illegal sentence, nor were his fundamental rights violated. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his sentence for possession of a controlled substance while incarcerated was plainly more lenient than what a legal sentence would have been, and thus, any purported error on the circuit court's part in imposing appellant's sentence was harmless. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

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Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

Inmate did not file his post-conviction collateral relief motion within three years and thus, motion was procedurally barred unless an exception applied, and the inmate failed to show that an exception applied. Miles v. State, 301 So. 3d 718, 2020 Miss. App. LEXIS 137 (Miss. Ct. App. 2020).

Several statutory bars applied because the mandate in petitioner's direct appeal issued in October 1996, and the successive petition for post-conviction relief was filed in September 2018; that filing was subject to the one-year time bar. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Defendant was not entitled to leave to proceed in the trial court because his application was subject to the statutory time bar, his previous petition for post-conviction relief was denied, the filing was successive, he presented no arguable basis for his claims, and the petition was frivolous. Cooper v. State, — So. 3d —, 2020 Miss. LEXIS 97 (Miss. Apr. 28, 2020).

Inmate's post-conviction relief claim was time barred under the Mississippi Uniform Post-Conviction Collateral Relief Act's three year statute of limitations. Galloway v. State, 298 So. 3d 966, 2020 Miss. LEXIS 104 (Miss. 2020).

Appellant's postconviction relief (PCR) motion was barred by the three-year statute of limitations set forth in Miss. Code

Ann. § 99-39-5(2). Appellant, who did not file his PCR motion until approximately six years after his conviction, failed to show any extraordinary circumstances to escape the statute of limitations. Kelly v. State, 306 So. 3d 776, 2020 Miss. App. LEXIS 170 (Miss. Ct. App.), cert. denied, 308 So. 3d 440, 2020 Miss. LEXIS 472 (Miss. 2020).

In an action for post-conviction relief, appellant failed to offer any evidence to substantiate any extraordinary circumstance that would explain his failure to assert his claims within the statutory three-year time limitation or to overcome the successive-writ bar and thus, the trial court did not abuse its discretion in denying appellant's post-conviction relief motion. Figueroa v. State, — So. 3d —, 2020 Miss. App. LEXIS 642 (Miss. Ct. App. Nov. 24, 2020), cert. dismissed, — So. 3d —, 2021 Miss. LEXIS 163 (Miss. 2021).

12. Successive writs.

Petitioner's application for leave to proceed in the trial court was denied because it was barred by time and as a successive application; notwithstanding the procedural bars, the claims raised in the application for leave were without merit because the filing was frivolous. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 12 (Miss. Jan. 29, 2020).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Habeas corpus.
4. Ineffective assistance of counsel.
6. Jurisdiction.

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

3. Habeas corpus.

Circuit court properly viewed defendant's habeas corpus petition as a post-conviction collateral relief motion because post-conviction use of habeas corpus was repealed and a motion framework was implemented specifically for post-conviction collateral review of challenges to convictions or sentences, as opposed to pre-conviction challenges regardless of how defendant denominated or characterized the pleading. Alexander v. State, — So. 3d —, 2021 Miss. App. LEXIS 301 (Miss. Ct. App. July 27, 2021).

4. Ineffective assistance of counsel.

Record was inadequate to allow the appellate court to make a finding on defendant's constitutional claim of ineffective assistance of counsel, and the appellate court's review of the record did not affirmatively show that defendant's representation was ineffective. However, the appellate court concluded defendant should be given the opportunity to make a record on the issue in a properly filed application for leave to file a motion for post-conviction relief. Hinton v. State, 311 So. 3d 1213, 2020 Miss. App. LEXIS 526 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 831, 2021 Miss. LEXIS 43 (Miss. 2021).

6. Jurisdiction.

Circuit court was without jurisdiction to rule on defendant's post-conviction collateral relief motion motion because defendant failed to obtain the required permission from the Supreme Court of Mississippi to file the motion. Furthermore, there was a final judgment and sentence entered in defendant's case as the convictions and sentences terminated the litigation and defendant's appeal was not interlocutory but was a direct appeal of the judgment of conviction and sentence and from the denial of defendant's motion for new trial. Alexander v. State, — So. 3d

—, 2021 Miss. App. LEXIS 301 (Miss. Ct. App. July 27, 2021).

Because petitioner's motion for post-conviction relief (PCR) was filed while his direct appeal was pending, his request for PCR relief was premature, plus he failed to seek leave from the supreme court before filing his PCR motion in the circuit court; therefore, the circuit court's dismissal of the PCR motion was affirmed, as the circuit court lacked jurisdiction to reach the merits of his claim. Williams v. State, 296 So. 3d 137, 2020 Miss. App. LEXIS 18 (Miss. Ct. App. 2020).

Fact that the state supreme court granted appellee leave to proceed did not give appellee an unfettered right to present claims not alleged in the post-conviction motion, and the court's grant of leave to amend her motion to assert a new claim was circumscribed by statutory jurisdictional requirements. As appellee did not first obtain leave to challenge the State's failure to instruct the jury, the circuit court lacked authority to adjudicate the amended motion and allow appellee to amend her PCR motion to assert a new claim. State v. Childs, 309 So. 3d 1, 2020 Miss. App. LEXIS 169 (Miss. Ct. App. 2020), cert. denied, 309 So. 3d 450, 2021 Miss. LEXIS 75 (Miss. 2021).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Ineffective assistance of counsel.
6. Evidentiary hearing.

1. In general.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

2. Ineffective assistance of counsel.

Circuit court erred by summarily dismissing defendant's motion for post-conviction relief without an evidentiary hearing because defendant presented sufficient evidence to require an evidentiary hearing—his "best interest" plea was made in reliance on his counsel's erroneous advice that he was not pleading to crimes of violence and that defendant would be eligible for parole, earned time, and trusty time—and it could not be said that defendant could prove no set of facts in support of his claim that would entitle him to relief beyond a do Manuel v. State, 304 So. 3d 713, 2020 Miss. App. LEXIS 592 (Miss. Ct. App. 2020).

6. Evidentiary hearing.

Allegedly undisclosed information was not exculpatory in the sense that it did not provide evidence that defendant was actually innocent but only that a possible Miranda violation would have supported a motion to suppress defendant's confession; by entering her guilty plea, petitioner waived her claim of a Brady violation and no hearing was required on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
6. Res judicata.

1. In general.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

6. Res judicata.

In petitioner's death penalty case, his intellectual-disability claim was barred because he did not demonstrate a novel claim or a sudden reversal of law relative to the issue that would exempt it from the procedural bar of res judicata; petitioner's request for leave to proceed in the trial court with the intellectual-disability claim was not well-taken because he failed to present a substantial showing of the denial of a state or federal right. Dickerson v. State, — So. 3d —, 2021 Miss. LEXIS 92 (Miss. Apr. 8, 2021).

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
8. Successive writ.
9. Ineffective assistance of counsel.
11. Relief denied.

1. In general.

Although the underlying physical evidence, the medical and autopsy records, remained the same, changes in experts' scientific understanding on issues such as bitemark analysis and shaken baby syndrome might constitute newly discovered evidence, excepting such claims from procedural bars of the Uniform Post-Conviction Collateral Relief Act; the court reversed and remanded for the trial court to conduct an evidentiary hearing and allow petitioner to provide expert testimony on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Video evidence containing the alleged Miranda violation was not of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in

the conviction or sentence; therefore, the court found no additional exception to the procedural bars based upon the discovery of the videotape by postconviction relief counsel. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

8. Successive writ.

Appellant's post-conviction collateral relief (PCR) motion was procedurally barred as a successive motion because appellant's second PCR motion challenged similar issues that he raised in his first PCR motion. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Appellant's post-conviction collateral relief (PCR) motion was procedurally barred as a successive motion because appellant's second PCR motion challenged similar issues that he raised in his first PCR motion. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

9. Ineffective assistance of counsel.

There were no grounds for reversing the determination that trial counsel provided adequate representation at sentencing because appellant failed to bear his burden of persuading the trial judge by a preponderance of the evidence that his trial counsel failed to render constitutionally adequate performance; at most, appellant's post-conviction counsel presented an alternative reasonable strategy but failed to show that trial counsel's strategy was not reasonable; Walker v. State, — So. 3d —, 2020 Miss. LEXIS 263 (Miss. June 25, 2020), sub. op., 303 So. 3d 720, 2020 Miss. LEXIS 385 (Miss. 2020).

11. Relief denied.

Regardless of whether some or all of appellant's evidence was "new," the trial court considered all of the evidence, and its finding that it would not probably produce a different result in a new trial was not clearly erroneous, and it properly denied appellant's post-conviction relief (PRC) motion; with respect to whether short falls could cause fatal injuries, the testimony at the PCR hearing was not materially different from the trial testimony. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

Trial court did not clearly err by finding that the testimony of appellant's experts would not probably produce a different result because the evidence at the post-conviction relief hearing indicated that a majority of practicing physicians continue to accept "shaken baby syndrome" (SBS) or abusive head trauma (AHT) as valid diagnoses; the "debate" and "difference of opinion" regarding SBS and AHT existed at the time of Shelby's trial. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

JUDICIAL DECISIONS

ANALYSIS

2. Dismissal or denial of application.
4. Successive petitions.

2. Dismissal or denial of application.

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

In his post-conviction relief petition, petitioner failed to identify an alternative method of execution that was feasible, readily implemented, and significantly reduced a substantial risk of severe pain; thus, from the face of the petition, he had no Eighth Amendment method-of-execution claim, and his request for leave to proceed in the trial court with a motion for post-conviction relief was denied. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

4. Successive petitions.

Because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied; petitioner filed numerous prior petitions for post-conviction relief, which had been rejected, and thus, his petition was successive. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).

Defendant was not entitled to leave to proceed in the trial court because his application was subject to the statutory time bar, his previous petition for post-conviction relief was denied, the filing was successive, he presented no arguable basis for his claims, and the petition was frivolous. Cooper v. State, — So. 3d —, 2020 Miss. LEXIS 97 (Miss. Apr. 28, 2020).

Petitioner's initial petition for post-conviction relief was ultimately denied, and thus, his second petition was subject to the successive-writ bar. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).